

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ERIC KELLEY,  
Plaintiff,

v.

Civil Action No. 04-11192-NMG

SHERIFF DIPAULO, et al.,  
Defendants.

ORDER ON SCREENING PURSUANT  
TO SECTIONS 1915(e)(2) AND/OR 1915A

Having completed the screening on the merits of plaintiff's complaint and amendment pursuant to Sections 1915(e)(2) and/or 1915A:

FINDINGS

1. The complaint is frivolous, malicious, or fails to state a claim upon which relief may be granted:

No ☐ Yes ☒ as to plaintiff's claims against defendants  
Billerica House of Correction Legal Department;  
the Commissioner of the Massachusetts  
Department of Public Health; the Commissioner  
of Public Safety; and the Billerica Board of  
Health.

2. The complaint seeks relief from a defendant or defendants who are immune from such relief:

No ☐ Yes ☒ as to defendant(s) defendants Billerica House of  
Correction Legal Department; the  
Commissioner of the Massachusetts  
Department of Public Health; and the  
Commissioner of Public Safety.

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3. Section 1997e(g)(2) provides that:

"The court may require any defendant to reply to a complaint brought under this section if it finds that the plaintiff has a reasonable opportunity to prevail on the merits."

42 U.S.C. § 1997e(g)(2).

Is the complaint sufficient to satisfy the pleading requirements for stating a cognizable claim and does the plaintiff have a reasonable opportunity to prevail on the merits against one or more defendants?

a. Yes ☐ The Court has so determined and found as to defendant(s):  
\_\_\_\_\_

b. No ☐ because the Court has determined that the complaint does not satisfy pleading requirements for stating a cognizable claim against:

☐ all defendants ☐ the defendant(s)  
\_\_\_\_\_  
\_\_\_\_\_

c. No ☐ because the Court has determined that the likelihood that plaintiff will prevail on the merits falls short of the "reasonable opportunity" standard of the statute, as to claims against:

☐ all defendants ☐ the defendant(s)  
\_\_\_\_\_  
\_\_\_\_\_

d. Cannot say

☒ It is not feasible for the Court to make a determination on these questions on the present record as to claims against:

☐ all defendants ☒ the defendant(s) DiPaulo, Norton, Sgt. Flynn and Officer Thurmond Hall.

#### ORDERS

Based upon the foregoing:

1. The Clerk shall issue summonses and the United States Marshal serve a copy of the complaint, summons and this order as directed by the plaintiff with all costs of service to be advanced by the United States?

No ☐ Yes ☒ ☐ as to all defendants  
☒ only as to defendant(s) DiPaulo,  
Norton, Sgt. Flynn and Officer Thurmond Hall.

2. The Clerk shall dismiss this action unless, on or before the 42nd day from the date of this Order, plaintiff has filed a submission showing good cause why the Court should find that the pleading is sufficient to state a cognizable claim and that plaintiff will have a reasonable opportunity to prevail on the merits of plaintiff's claims against defendant(s)?

No ☐ Yes ☒ ☐ as to all defendants  
☒ only as to defendants Billerica House  
of Correction Legal Department; the  
Commissioner of the Massachusetts  
Department of Public Health; the  
Commissioner of Public Safety; and the  
Billerica Board of Health.

3. a. Although defendant(s) may not have been served with a summons and complaint, are the defendant(s) invited but not required to file an answer to aid the Court in reaching a prompt final disposition on the merits?

No ☐ Yes ☐ ☐ as to all defendants  
☐ only as to defendant(s)

OR

- b. If the defendant(s) have been served with a summons and complaint, are the defendant(s) required to reply within the time specified in the summons?

No ☐ Yes ☒ ☐ as to all defendants  
☒ only as to defendant(s) DiPaulo,  
Norton, Sgt. Flynn and Officer Thurmond Hall.

1/7/05  
DATE

/s/ Nathaniel M. Gorton  
NATHANIEL M. GORTON  
UNITED STATES DISTRICT JUDGE

